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LEADING CASES

DONE INTO ENGLISH

MACMILLAN & CO



LEADING CASES DONE INTO ENGLISH.



LEADING CASES DONE INTO ENGLISH.

BY
AN APPRENTICE OF LINCOLN'S INN.

REPRINTED FROM THE "PALL MALL GAZETTE."

Tibullus. How now, Ovid ! Law cases in verse ?

Ovid. Troth, if I live, I will new dress the law
In sprightly Poesy's habiliments.

BEN JONSON, *The Poetaster*, Act I.

SECOND EDITION.



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LEADING CASES DONE INTO ENGLISH.

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I. —THE SIX CARPENTERS' CASE.

(1 *Smith, L.C. 133, 7th ed.*)

THIS case befell at four of the clock

(now listeneth what I shall say),

and the year was the seventh of James the First,

on a fine September day.

The birds on the bough sing loud and sing low,

what trespass shall be *ab initio*.

1 Sept., 7 Jac., in
London, in the
parish of St. Giles,
extra Cripplegate,
hora quarta post
meridiem.

Leading Cases

"Upon the new assignment, the plaintiff assigned the trespass in a house called the Queen's Head, . . . with a common sign at the door of the said house fixed, &c."

It was Thomas Newman and five his feres
(three more would have made them nine),
and they entered into John Vaux's house,
that had the Queen's Head to sign.

The birds on the bough sing loud and sing low,
what trespass shall be *ab initio*.

They called anon for a quart of wine
(they were carpenters all by trade),
and they drank about till they drank it out,
and when they had drunk they paid.

The birds on the bough sing loud and sing low,
what trespass shall be *ab initio*.

"One John Ridding, servant of the said John Vaux, at the request of the said defendants, did there then deliver them another quart of wine and a pennyworth of bread, amounting to 8d., and then they there did drink the said wine and eat the bread"—(Et semble que ceo est merveleous petit manger et bever pur vj. homes)—"and upon request did refuse to pay for the same."

One spake this word in John Ridding's ear
(white manchets are sweet and fine):
"Fair sir, we are fain of a penn'orth of bread
and another quart of wine."

The birds on the bough sing loud and sing low,
what trespass shall be *ab initio*.

Done into English.

Full lightly thereof they did eat and drink

(to drink is iwis no blame).

“ Now tell me eight pennies,” quoth Master Vaux ;

but they would not pay the same.

The birds on the bough sing loud and sing low,

what trespass shall be *ab initio*.

“ Ye have trespassed with force and arms, ye knaves Action of trespass.

(the six be too strong for me),

but your tortious entry shall cost you dear,

and that the King's Court shall see.

The birds on the bough sing loud and nought low,

your trespass was wrought *ab initio*.”

Sed per totam curiam 'twas well resolved

Second resolution in
the case.

(note, reader, this difference)

that in mere not doing no trespass is,

and John Vaux went empty thence.

The birds on the bough sing loud and sing low,

Ideo prædict' Jo-
hannes in miseri-
cordia et defend'
sine die.

no trespass was here *ab initio*.

II.—COGGS *v.* BERNARD.

(1 *Sm. L.C.* 188.)

HOLT, C. J.—BRETHREN, ye see this cause, and the land's need
Laid on this bench this day, whereof our speech
Should be the sentence of no darkling tongue,
Seeing we are set amidst this strife of men
As wardens of a vast and windy shore
Stormed on with surf and shocks of violent seas,
To kindle some sure beacon for a sign
Shining henceforth to seaward; such a light

Leading Cases Done into English.

Men look for from this face of most high law,
Ardent with prophecy, and illuminate
With fire of constellated precedents,
Most royal in bounty; wherefore in this case,
Sirs, I have much considered, questioning
Our books within myself, not as the fool
That lightly utters fruits of a light mind,
But weighing, as this declaration is,
How it shall lie; and now for very law,
Seeing with eyes of clear and equal sight,
I hold it will, for if a man will take
This thing upon him, saying he will remove
His neighbour's goods, and safely lay them down
From cellar unto cellar, and with sloth
Of spirit unskilled and lax improvident hand
Cast those goods down and spoil them, what reward
Shall the Court give to this man? yea, I think
He shall not hunger or lack for meet reward,

Leading Cases

Though he did look for none, nor were by trade
A common porter ; such a sixfold coil
Of divers sorts of bailments, binding men
With diverse powers to manifold degrees
Of vigilance and answerable care,
Is woven and shed around him as a net
Inevitable, whose woof of ancient wit
I first of all men born in all this land
Shall now in seemly wise with ordered speech
Spread forth, and through this undistinguished field
Drive the clean ploughshare of dividing mind,
Ox-wise returning to and fro, till all
Be ready for the seed that springs to fruit
Of judgment ; and the first is where a man
Hath taken goods to wait the bailor's use
Hireless, in unrewarded custody
And bare deposit ; he shall safely walk
Blameless in equal ways, preserving them

Done into English.

With equal care like as he doth his own,
Be it or great or small; but negligence
Gross and apparent, seeing an evil mind
Therein we deem to work his own effect
Of fraud and malice, to the utmost loss
Shall surely bind him; such not doubtful voice
Of witness clear and consonant is poured
In ears made meet for hearing from this book
Of Bracton, who, being old, yet speaketh law
Most righteous; nor this once, but twice and thrice
He speaketh, meting fitting measure of care
To loans gratuitous and commodate,
Or else for hire, demanding diligence
Most strait and perfect; the next case is fourth
In several station that with borrowed pledge
And pawn invaduate holds the middle way
Not facile as the first, nor stern to seek
Consummate care, whose weight and whole recoil

Leading Cases

Even now with one fifth wave of forceful need
Falls on that carrier who for all men's use
Doth exercise his calling, being bound
In all events against all jeopardies,
Yea, though an irresistible multitude
With might of hands and violent mastery
Should make his freight their quarry; what sheer stress
Of the land's embattled foemen, or the act
Of most high Gods hath wrought of ruin, shall rest
Excusable, that only; but who takes
Like trust by private and peculiar hand,
Having reward, shall bear the lighter charge
Fulfilled and perfect in such measure of care
As reason bids; and lo, the sixth of kind
Of these folk holden of six necessities
Is this rewardless one who holdeth goods
In simple mandate; and on him no less
His undertaking, and the owner's trust

Done into English.

Clothing his promise with investiture
Of apt consideration, lay the load
Of diligence in duty, that thereby
The sure sweet common faith of man to man
Shall lighten level from eyen to equal eyes
Of one to other, not being desecrate
In desolate places and dispraised of men.

But ye, of staves compact of cooper's craft
Most pitiful, whose glory of bended wood
Is shattered, and the spirit of life therein
Spilt with the cask's undoing, I bid you hail,
Lift up your heads with whatso lifting up
Slain men may lift them; yea, be strong of heart,
Deem not yourselves as dead, seeing this your bane
Shall flower for life-giving to England's law,
A leading case for ever, and each drop
And several runlet of this liquor shed
In Water-lane shall rise in Westminster

Leading Cases Done into English.

A fountain-head and wellspring of clear streams¹

Perennial ; so this court hath judged and I.

¹ The cause of action was that the defendant had undertaken "*Salvo et secure elevare, Anglice* to take up, several hogsheads of brandy then in a certain cellar in D. *et salvo et secure deponere, Anglice* to lay them down again in a certain other cellar in Water-lanc," and "the said defendant and his servants and agents *tam negligenter et improvide* put them down again into the said other cellar *quod per defectum curæ ipsius* the defendant, his servants and agents, one of the casks was staved, and a great quantity of brandy, *viz.* so many gallons of brandy, was spilt."

III.—ARMORY v. DELAMIRIE.

(1 Sm. L. C. 357.)

THE ARGUMENT.—*This tale sheweth how a poor chimney-sweep found a goodly jewel, and by the guile of a goldsmith's prentice was like to lose all fruit thereof; yet afterward, in Hilary Term of the eighth year of George the First, brought trover for the same and had his damages, and moreover wrought thereby a perpetual memory of his name and an occasion for excellent learning.*

IN Middlesex, that excellent county,
there dwelt a little sweep hight Armory,
which clomb and crope in chimneys strait and small,
to earn full scanty living therewithal.
This Armory, one time as he doth fare
sadly about his toil, is haply ware,

Leading Cases

looking to earthward, of a glittering thing,
and putteth hand thereto, and lo a ring
with gold ywrought and seemly stones therein.
To know the worth hereof he fain would win,
and bringeth it unto a stall thereby,
where sat a goldsmith, hight Delamirie,
and eke a prentice knave of evil wit :
(I n'ot his name, the book saith nought of it.)
This prentice, then, as he would weigh the ring,
took it in hand, and of his false cunning
hath from the socket done the stones clean out.
Anon he cried, " Master, thereof no doubt,
three halfpence is the worth, there nis no more."
Quod Armory, " Me this misliketh sore ;
give me my jewel back, and fare ye well
with such folk which have will good cheap to sell."
For all his words they gave him for the nones
the socket empty and withouten stones,

Done into English.

and leugh upon him and gan call him thief.

Therefore full wisely telleth he his grief

to men of law, which answered him anon :

“The finder hath lawful possession

for all men, save the very owner's title.

Eke from this master ye shall have requital,

for wrong that servant doth, books techen so,

in master's business, *nocet domino.*”

What needeth wordës mo : the suit is brought ;

it falleth every point as thus was taught.

And seeing by this wickedness the stone

was made away, and his worth known to none,

craftsmen there came to show by weight and tale

what gems of best and uttermost avail

might in the compass of that ring be laid ;

with no less damage it should be apaid :

for what man hideth truth in wrongdoing,

against him the law deemeth everything.

Reading Cases Done into English.

Thus hath the justice given doom aright,
and Delamirie goeth in ill plight,
and Armory is joyful of his gain.
The tale is done, there is no more to sain.

IV.—SCOTT *v.* SHEPHERD.

(1 *Sm. L. C.* 477.)

ANY PLEADER TO ANY STUDENT.

Now, you're my pupil !

On the good ancient plan I shall do what I can

For *your* hundred guineas to give *my* law's blue pill

(Let high jurisprudence which thinks me and you dense,

Set posse of cooks to stir new Roman soup ill) :

First volume of Smith shall give you the pith

Of leading decision that shows the division

Of action *on case* from plain action of *trespass*

Where to count in assault law benignantly says " Pass ! "

Facts o' case first. At Milborne Port

Was fair-day, October the twenty and eight,

Trading Cases

And folk in the market like fowls in a crate;
Shepherd, one of your town-fool sort
(From Solomon's time they call it sport,
Right to help holiday, just make fun louder),
Lights me a squib up of paper and powder
(Find if you can the law-Latin for't)
And chucks it, to give their trading a rouse,
Full i' the midst o' the market-house.
It happened to fall on a stall where Yates
Sold gingerbread and gilded cates
(Small damage if *they* should burn or fly all);
To save himself and said gingerbread loss,
One Willis doth toss the thing across
To stall of one Ryal, who straight on espial
Of danger to *his* wares, of selfsame worth,
Casts it in market-house farther forth,
And by two mesne tossings thus it got
To burst i' the face of plaintiff Scott.

Done into English.

And now 'gainst Shepherd, for loss of eye,
Question is, whether *trespass* shall lie.

Think Eastertide past, off crowds and packs town
Where De Grey, Chief Justice, and Nares and Blackstone
And Gould his brethren are set in banc
In a court full of serjeants stout or lank,
With judgment to give this doubt an end
(Layman hints wonder to counsellor friend,
If *express colour* be visible pigment,
And what's by black patch a-top serjeant's wig meant).
Nares leads off, opines with confidence
Trespass well lies and there's no pretence
But who gave squib mischievous faculty
Shall answer its utmost consequence
(*Qui facit per alium facit per se*):
Squib-throwing a nuisance by statute, too!
Blackstone, more cautious, takes other view,

Leading Cases

Since 'tis not all one throw, but an impetus new
Is given to squib by Ryal and Willis,
When *vis* first *impressa* thereon spent and still is ;
In fine, would have justice set mouth firm, not sound awry,
But teach forms of action to know each his boundary.
Gould holds with Nares :—If De Grey pairs ?
That were, odzooks, equipose, *dignus vindice*
Nodus ! But—"I too on same side faith pin, d'ye see,"
So De Grey spake—"For, as I take
It, the consequences all flowed of course
From Shepherd's original wrongful force :
Seen rightly, in this case difference *nil* is
In squib's new diversion by Ryal and Willis,
Whom (against Brother Blackstone, I'm free to confess it) I
Account not free agents, since merest necessity
Bade cast off live squib to save selves and wares."
For such reasons, concurs with Gould and Nares.
Ergo, "*Postea* to the plaintiff."

Done into English.

Next, digest learned editor's notes,
Mark the refinements, preceptor acquaint i
You've duly mastered cases Smith quotes—
Eh?—No! What says book here? As I'm alive,
'Distinctions, had place in principal case,
Since fifty-two make less ado,
And in fact by Judicature Act,
After November seventy-five,
Last stumps of pleading by final weeding
Are grubbed up and thrown adown wind to perdition
So, note's omitted in present edition!"

Well—liquor's out, why look more at old bottle?
Gulp down with gusto, you that are young,
These new Rules' ferment, tastes ill in *my* throttle
Since Justice, *in nubibus* no more on high sitter
Descends to speak laymen's vulgar tongue.
So be it! *Explicit—parum feliciter.*

V.—WIGGLESWORTH *v.* DALLISON.

(1 *Sm. L.C.* 598.)

"This was an action of trespass for mowing, carrying away, and converting to the defendant's own use, the corn of the plaintiff growing in a field called *Hibaldstow Leys*, in the parish of *Hibaldstow*, in the county of Lincoln."

"HIBALDSTOW LEYS, they say, this field is call'd"—

So I to Edwin, as he swung with slow

Mechanic oscillation on the gate,

Half mindful in dim chambers of the brain,

If our new prophets read old riddles right,

Of some ancestral four-foot playfulness—

"A strange old name." But he, my country friend,

Peal'd forth bucolic laughter, no dry crease

And measur'd curl of nicer town-bred lips,

But full cachinnant music from the lungs

Leading Cases Done into English.

Catching the half-form'd word : "Ay, strange to you
Strangers from town—but I—we know them well,
The field and the field's tenant : there's a tale
My grandfather could tell of Wigglesworth,
Old Wigglesworth ; his lease from Dallison
(His lord late in reversion, now possess'd)
Ran out, next May-day fills the hundred years :
But he had sown his corn, good easy man,
In custom'd thrift and course of husbandry,
Thinking to cut and carry without fail
And take by laudable and ancient use,
Whereto man's memory finds in Hibaldstow
No counter instance, his way-going crop
From reasonable portion of his lands.
He little dreamt the coil that should ensue—
Action of trespass, declaration, plea
Of *liberum tenementum*—and how else
Their lawyers' jargon runs : for Dallison,

"One Isabella
Dallison, de-
ceased, being
tenant for life,
and Dallison,
the reversioner
in fee, made a
lease
to the plaintiff
. . . for twenty-
one years to be
computed from
the 1st of May,
1755."

Leading Cases

The crop grown up, and farmer Wigglesworth
Claiming the fruits, flatly withstood his right.
I know not why—haply a fit of spleen ;
Haply the scrivener-steward's over-zeal
Would strain his lord's right to the utmost marge
Of all those four-square and indented skins,
Perpending clause and covenant, with dull ear
Deaf to the promptings of the larger rule,
Folk-law that needs no penman ; or, mayhap,
The man's own ill desire, as such rank weeds
Will wax in lordship and mere wantonness
Of new possession, was to burst the bonds
Devised of ancient wont and kindliness
To save dominion whole, not marring use.”
He paus'd, and, careless, brush'd a careless gnat.
Then I : “Nay, take me farther ; of these twain,
Your downright farmer and your churlish lord,
The landlord had already the nine points ;

Done into English.

The farmer stirr'd the law then?" "Ay, trust him
For that; a man, once mov'd, stout in his right—
Or wrong at need—East-Anglian to the core;
Dallison kept him out, and mow'd the corn;
He sued and won." "Whether from flying foe
Or fighting?" "O, 'twas fought, and lustily,
First up at 'sizes: there the jury found
The custom clear for Wigglesworth; but that
Was only half the battle, Dallison
Being East-Anglian too; they took the cause
To Westminster and set their tools to work,
Motion and rule; well, sir, it somehow grew,
Through due and fitting course of tortuousness,
Ripe for full argument; then counsellors
Clash'd in high joust with reasons, precedents,
Statutes; they say, one call'd the almanack
To witness no such custom could be good
Since May-day was transform'd by change of style;

See the argu-
ment for the
defendant, *ad*
fin. 1 Sm. L. C.
(7th ed.) 605

Leading Cases

At last their quivers' crabbed store was spent,
There came a hush, and nestling of great wigs
In council—*curia advisari vult*—
For Edwin, now a country squire, had sat
With Templars, and such not uncherished scraps
Clung to him from his days of eating terms—
“And nothing fixt: but after certain days
Lord Mansfield spake in words of pithy weight
The judgment of the Court (the words were all
His own, the judgment haply more than half)
Deeming the custom righteous, just, and good,
Seeing 'tis fit that he who sows should reap,
And farming by such liberal custom's aid
Shall gather increase, and the deed admit
No jot of contradiction, but a right
Nowise repugnant. And all this and more
Is printed in a wise and weighty book,
With gloss and commentary, case on case,

Done into English.

Rich soil for fresh debate and argument
To swell the garden of choice instances,
And bless posterity with new delicacies
Of hair-breadth difference. Thus old Wigglesworth
Fought for old use, and in his proper cause
Stablish'd the general wont of Hibaldstow,
And built himself an everlasting name."

VI.—MOSTYN *v.* FABRIGAS.

(1 *Sm. L.C.* 658.)

The situation and territorial sovereignty of *Minorca*, 15
Geo. III.

MINORCA lies in the Middle Sea,

Within the ward of Cheap to wit,

Was aforetime of England's empery,

And St. 'Mary-le-Bow to prosper it.

The manner of government of the island.

John Mostyn bare rule within that land,

Within the ward of Cheap to wit,

On such as misliked him he laid strong hand,

And St. Mary-le-Bow to prosper it.

Leading Cases Done into English.

On Anthony Fabrigas he hath passed,

Within the ward of Cheap to wit,

And his body in prison six days hath cast,

And St. Mary-le-Bow to prosper it.

The false imprisonment complained of in the case.

And he drave him into the coast of Spain,

Within the ward of Cheap to wit,

That a twelvemonth he might not come back again,

And St. Mary-le-Bow to prosper it.

And this for no judgment or righteous cause,

Within the ward of Cheap to wit,

So lightly this Mostyn did reck of laws,

And St. Mary-le-Bow to prosper it.

‘I may go to England and take mine ease,

Within the ward of Cheap to wit,

For my trespass was done beyond the seas,”

And St. Mary-le-Bow to prosper it.

Governor *Mostyn's* vain confidence to escape the jurisdiction of the *English* courts.

Leading Cases

But mark how Fabrigas doth devise,

Within the ward of Cheap to wit,

Vis., Mr. Peckham
and Mr. Serjeant
Glynn.

With pleaders and serjeants wary and wise,

And St. Mary-le-Bow to prosper it.

Action in C.P.

In the Common Pleas they have sued their writ

Within the ward of Cheap to wit,

Capias.

And holden Mostyn to answer it,

And St. Mary-le-Bow to prosper it.

Pleadings and trial.

The venue is laid with *videlicet*,

Within the ward of Cheap to wit,

The issue made up, and the jury met,

And St. Mary-le-Bow to prosper it.

Verdict for £3,000
damages and £90
costs.

For three thousand pound was the verdict then,

Within the ward of Cheap to wit,

And also for costs four score and ten,

And St. Mary-le-Bow to prosper it.

Done into English.

And Mostyn's serjeants were not of skill,

Within the ward of Cheap to wit,

For to show that cause of action ill,

And St. Mary-le-Bow to prosper it.

Proceedings in
error : judgment
affirmed.

There be actions local which must be tried,

Within the ward of Cheap to wit,

Where their proper cause doth of right abide,

And St. Mary-le-Bow to prosper it.

But trespass of transitory kind,

Within the ward of Cheap to wit,

Shall be laid where the plaintiff hath a mind,

And St. Mary-le-Bow to prosper it.

And look, to what end a fiction is made,

Within the ward of Cheap to wit,

To the same it shall never be gainsaid,

And St. Mary-le-Bow to prosper it.

Vide Lord Mans-
field's judgment
Cowp. 177.

Leading Cases Done into English.

Common Law Procedure Acts and Judicature Acts. *Et vide* Whitaker v. Forbes, Court of Appeal,¹ C.P.D.51.

Now fictions be dead, and venue undone,

Within the ward of Cheap to wit,

And local or transitory's all one,

And St. Mary-le-Bow to prosper it.

And this is the burden of time's swift feet,

Within the ward of Cheap to wit,

And of leading cases grown obsolete,

And St. Mary-le-Bow to prosper it.

VII.—PASLEY *v.* FREEMAN.

(2 *Sm. L.C.* 64.)

It was Pasley came with his felaw
to London town with wares to sell,
sixteen bags of the fine cochineal,
for buyers who should like them well.

Videlicet die xxjmo
Feb. Londini supradict'
&c.

Stood up a buyer and spoke so fair,
John Christopher Falch he had to name :
“ Right well me liketh the cochineal fine,
and I will freely buy the same.”

Leading Cases

“ If ye be fain to buy our wares,
we must wot one thing or ere we sell :
ye shall do us to wit if ye be of worth,
a man to trust and credit well.

“ For but and the silver and gold were paid,
this day were a day to rue full sore :

Appiert per le liver que
le cochineal estoit de
grand value—viz. : del
value £2.634 16s. 1d.

two thousand pound is not the worth,
nor if ye tell six hundred more.”

Joseph Freeman stood up and spake :

“ I rede you let the wares be sold,
John Christopher is a man of trust
for the white silver and eke red gold.”

They have given their wares to John Christopher,
and set him a day to pay in hand ;

A ma entente le fait fuit
issint, coment que ceo
nest expressement
nosme deins le liver.

John Christopher's fled o'er the wan water
and left no goods within the land.

Done into English.

Pasley is woxen as a man wood,
to sit still him seemed nothing meet;
said, We'll up and sue this false Freeman,
to do us right for his deceit.

There was Grose the one justice,
said this was but a lewëd thing,
for where ye find no word of promise,
no action lieth for bare lesing.

Nota que la ley d'Engleterre est auxi moult haulte et excellent science, que divers points ne poient estre facilement resolve, et pur graunt reson maynts foytz les justices differont, come icy, quar *Ni affirmatum, nisi sit bene perditatum.*

Buller was the other justice,
said, Here is damage and deceit;
where by word of man be comen these twain,
the third is, to requite his cheat.

Ashhurst was the third justice,
said, Though he gain not by the lie,
his malice is yet more curst of kind
than if he had hope to win thereby.

"It ought more emphatically to lie aganst him, as the malice is more diabolical, if he had not the temptation of gain."
2 Sm. L.C. at p. 80.

Leading Cases Done into English.

Lord Kenyon was the chief justice,
said, Full little is left to tell ;
but the fraud was plain and eke the loss,
and I hold this action lieth well.

*Nota l'effect del statute.
Et est assavoir que per
reson et entendement
poet home ovesque
temps et diligence con-
uistre la comen ley,
mes les statutes nemye.*

So Pasley won that cause as then ;
but merchants had thereof affright,
and have letten ordain in Parliament,
such words shall have no harm ne might
to hold one bound for his fellow's trust,
but if they be written in black and white.

VIII.—DOVASTON *v.* PAYNE.

(2 *Sm. L.C.* 136.)

The Court. “O what man are ye that cry so sore?”

Free and fair is the king's highway.

Dovaston. “My kine are gone, and I have no more,
Which Payne hath caught and doth keep
away.”

Replevin for taking
the cattle of the
plaintiff.

Cur. “That ye took his cattle, is this well seen?”

Free and fair is the king's highway.

Payne. “They were damage feasant in my demesne,
And therein I took them, as well I may.”

Avowry.

Leading Cases

Cur. “How came your kine on your neighbour’s
land?”

Free and fair is the king’s highway.

Plea. *Dovaston.* “By hedges and fences on either hand,
That were fallen to ruin and great decay.”

Cur. “Nay, tell us, what were your kine about?”

Free and fair is the king’s highway.

Dovaston. “They were in it, they erred and escaped
thereout,
Where Payne of right should amend the
way.”

Special demurrer. *Payne.* “For aught he hath said they were there of
wrong,

Free and fair is the king’s highway.

For if they were passing *through and along*,
No word thereof doth his pleading say.

Done into English.

And if the fence I must needs repair,

Free and fair is the king's highway.

Why, that is for such as of right are there,

Not for folk or beasts that will idly stray."

Cur.

"The right is to pass and repass alone,

Judgment for
fendant.

Free and fair is the king's highway.

And that your pleader should well have
known,

Whose fault hath lost you this cause to-day.

And now the case is exceeding plain,

See per Buller

Free and fair is the king's highway.

He shows how your kine he might well
distrain,

And ye show us nothing to say him nay."

Leading Cases Done into English.

For special pleading was then of might,

Free and fair is the king's highway;

And of Payne or Dovaston which had right

Is hid for ever and eke a day.

IX.—ELWES *v.* MAWE.

(2 *Sm. L.C.* 162.)

STRIKE now, O Muse, a new measure, come forth for a
greater achievement,

Armèd in hexameters, august, to refute mere mortals,
Carping and cavilling brood, who doubt if such metre in
English

Justly and fully sufficeth to render the music of Homer;
Calling it harsh, unruly, dog-tail-dragged, tin-kettle clatter;
Jingle of lumbering accent, unfitted for themes heroic.

Sing me the strife immortal that rose betwixt landlord
and tenant,

Strife that set high in the heavens a star to illumine in
all time

Leading Cases

Divers kinds and distinctions of chattels annexed to the
freehold.

Named with what names, O Muse, were the heroes of
this litigation,

Who stood firm in defence, who sued with furious
onset?

Elwes, the shrewd, was plaintiff, and Mawe, the thrifty,
defendant.

Mawe was lessee from Elwes of lands in the county of
Lincoln,

Messuage, out-houses, stables, and barn, in the parish of
Bigby;

Mawe, the thrifty, looked round him and scanned those
premises wisely,

Full six years he scanned them, beholding the farm's
occupation

Minished in use and worth for want of convenient
buildings :

Done into English.

Therefore he laid to his hand, and set up those convenient buildings,

All at his own expense, a carpenter's shop and a beast house,

Houses of fuel and carts, and a pump-house, of brick and mortar,

Founded fast in the ground, and tiled, and of brick were the pillars.

So he possessed his farm, and rejoiced in his useful buildings,

He and all men and all beasts of the field in the parish of Bigby.

Time, which men count by moons, but the gods by terms and vacations,

Stood not nor halted the while, and the lease drew nigh to its ending.

Therefore did Mawe, the thrifty, bespeak his own heart and take counsel,

Reading Cases

This way and that revolving the cost and the gain, and
the chances

Weighing, and thus at the last to himself did his heart
make answer :

“Lo now, I leave these lands, and shall be to this farm
as a stranger ;

Soothly it little shall profit me then, if the houses I
builded

All at mine own expense, the carpenter's shop and the
beast-house,

Houses of fuel and carts, and the pump-house, of brick
and mortar,

Joy to all men and all beasts of the field in the parish
of Bigby,

Stand there after my time, and be left a possession to
Elwes :

Nay, but I surely will move their foundations, digging
around them,

Gone into English.

Raze their walls, and their stuff, the goodly bricks and
the mortar,

Keep for a gain to myself, and leave the land as I
found it."

So then in all things he did in such wise as his heart
had counselled,

Razed those walls, and moved the foundations, digging
around them,

Carted away the stuff for himself, the bricks and the
mortar.

Elwes, the shrewd, sat aloft, and beheld from his height
of reversion

These things wrought, and, beholding, his anger was
kindled within him,

Anger that moved him to deeds of might and to Lincoln
assizes.

There he declared against Mawe for his injured estate
in reversion,

Leading Cases

Claiming the buildings his own, their destruction a waste
and a trespass.

Great was the case, and the point too grave for Lincoln
assizes ;

After a verdict for Elwes, the case was reserved for the
full court.

There, where the King's own pleas were before his justices
holden,

Counsel for Elwes and Mawe stood forth and strove with
examples,

Showing what things in old time were esteemed ingrown
to the freehold,

Rooted past lawful removal, what kept their moveable
nature.

Much they debated of wainscot and window, of furnace
and oven,

Vats of the dyer, and cider-mills, and boilers and salt-
pans ;

Done into English.

Also, not least, a new thing, fire-engine, a blessing to
coal-mines.

Twice in two terms they strove, and the court considered
its judgment,

Judgment which afterwards, well advised, the Chief Justice
delivered,

Stated the case and the question, and spoke their con-
sidered opinion ;

No right had the defendant, they held, to remove these
buildings.

Wisely he showed how the general rule bids cleave to
the freehold

Things by the tenant once fixed, and explained the divers
exceptions

Suffered in favour of trade, the furnace, the vats, and the
boilers,

Also the new fire-engines, the cider-mills, and the salt-
pans ;

Leading Cases

Ever in favour of trade such exceptions, no mention of
farming ;

Further to stretch the exception to mere agricultural
buildings,

Not for a certain trade, were great and rash innovation.

Wherefore Elwes, the shrewd, maintained his cause and
his verdict,

Had great worship of all men there, and went homeward
rejoicing,

Bearing the *postea*, goodly-engrossed, the prize of the
battle.

Stay now and rest, O Muse, some breathing-space from
thine headlong

Flight, and abate thy storms whose harmony, thunder-
laden,

Harmony called by profane ones a vile accentual jingle,
Leaves all Greeks outsung, outstorms all thunder of
Homer.

Done into English.

This we have shown them, O Muse ; but if they presume
to deny it,

Say these hexameters jingle, or want any note of the
grand style,

Deadly and swift thy revenge on such carping and
cavilling creatures,

Grievous and grim their reward at thine hand, and the
sword of thy vengeance :

All the Reports at large we will take and versify likewise.

X—MARRIOT v. HAMPTON.

(2 Sm. L. C. 405.)

ARGUMENT.—*This is an exceeding pitiful ballad, and therefore I shall divide it before I write it down. And I will divide it subtly, for it hath many parts. First it is divided into two parts. The first part sheweth the former dealing between the parties, and the grounds of this action. The second part sheweth the course of this action, and the fortunes of the plaintiff therein. The second part begins here: Go to now. The second part is again divided into five. The first setteth forth Marriott's new enterprise in hope to recover his fortune. The second sheweth his discomfiture at Nisi Prius. The third expoundeth the endeavour of his counsel to have a new trial. The fourth sheweth how the Court wholly refused the same, and the weighty grounds in reason and law for their decision. The fifth, moralizing upon the whole tale, smith what instruction and warning it behoves all discreet men to take from this case. The second begins here: Sir plaintiff. The third begins here: And Gibbs. The fourth begins here: And O but. The fifth begins here: And if like. Also the burden hath two parts. The first relateth to the action, and doth express the original mischance whence this tragedy arose. The second relateth both to the action and to the author, and doth express in very lamentable wise as well the particular grief of the plaintiff in this case, which is the literal sense, as in a general and allegorical sense, which is a more subtle and excellent thing, and to be understood by certain I wot of, the author's grief and heaviness at the downfall of Pleading, on which once most fair Lady of our Four Inns the word is in these days fulfilled, Quomodo sedet sola civitas. The second part begins here: Sing sorrow.*

Leading Cases Done into English.

WHEN Hampton sold goods to Marriot,

Woe's me for goods sold, and wellaway !

Then Marriot paid, and receipt he got ;

Alas ! it were better he paid it not.

Sing sorrow for money had and received,

And alack for the common counts, O.

The original sale of goods to *Marriot*, and *Hampton's* unconscionable action for the price thereof, which in truth he had in hand.

For the false knave Hampton sued him amain ;

Woe's me for goods sold, and wellaway !

The receipt whereby his discharge was plain

Did Marriot seek, and he sought in vain :

Sing sorrow for money had and received,

And alack for the common counts, O.

He must needs pay twice, and for costs was

bound ;

Woe's me for goods sold, and wellaway !

The now plaintiff *Marriot* unable to defend that action : but by the secret ways of destiny the receipt being at a later day found,

Pending Cases

But there came a day the receipt was found,
He never had liever no thing on ground.

*Sing sorrow for money had and received,
And alack for the common counts, O.*

lie merrily sueth for
money had and
received.

“Go to, now, this knave in my turn I'll sue,
(*Woe's me for goods sold, and wellaway!*)

And his pride and his evil gains undo:”

But what should befall full little he knew.

*Sing sorrow for money had and received,
And alack for the common counts, O.*

Ruling of Lord *Kenyon*,
C.-J., at *Nisi Prius*.

“Sir plaintiff,” quoth *Kenyon*, “your wit is
but raw,

(*Woe's me for goods sold, and wellaway!*)

For to wage this emprise which never man saw,
To get back money paid under process of law.”

*Sing sorrow for money had and received,
And alack for the common counts, O.*

Done into English.

His name hath the crier thrice called upon,

Nonsuit.

Woe's me for goods sold, and wellaway !

And he standeth nonsuit with his cause undone,

But if a new trial may yet be won,

Sing sorrow for money had and received,

And alack for the common counts, O.

And Gibbs doth eagerly move the court,

Gibbs, of counsel for Marriot, moveth for a rule, and citeth authority.

Woe's me for goods sold, and wellaway !

For such actions have lain, by good report,

And the doubt is full weighty for cutting short ;

Sing sorrow for money had and received,

And alack for the common counts, O.

And O but the judges were wrathful men !

Rule refused. Judgment of Lord Kenyon, C. J.

Woe's me for goods sold, and wellaway !

Leading Cases

“ If we granted a rule, it were danger then
No action should henceforth have end again :”

** Sing sorrow for money had and received,
And alack for the common counts, O.*

Of Grose, J.

And another spake : “ Shall we give pretence
(*Woe's me for goods sold, and wellaway !*)
To fling doors open for negligence
Of parties unready with evidence ?”

*Sing sorrow for money had and received,
Aud alack for the common counts, O.*

Of Lawrence, J.

And a third : “ Thus dooms which be dight
and clear

(*Woe's me for goods sold, and wellaway !*)

Were upset for new matters brought up in arrear,
A thing most monstrous for ears to hear.”

*Sing sorrow for money had and received,
And alack for the common counts, O.*

Done into English.

So Marriot must pay for the commonwealth's sake. *Interest reipublicæ ut sit finis litium.*

Woe's me for goods sold, and wellaway!

And if like ensample ye will not make,

The moral of this
tragedy.

Keep shrewdly, good folk, all receipts that ye
take :

Sing sorrow for money had and received,

And alack for the common counts, O.

XI.—MANBY *v.* SCOTT, &c.

The wisdom of the law
concerning married
women.

HERKNETH this time and learn of me
How this our law and mystery
In ruling all men's property,
And most of folk that wedded be,
Of wisdom is fulfilled well.
All ye wives whose hap thus was
To show this marvel of our laws,
This tale is yours to tell.

DAME SCOTT.

Manby *v.* Scott.
(2 Smith, L.C. 429.)

I am the wife of Edward Scott,
That walked full daintily, I wot,
With silk and samite clothed upon.

Leading Cases Done into English.

The worth of it by ells was told
To forty pounds of the fine gold,
All in my lord's derision.
By mighty argument was found
His credit might not so be bound,
The mercer had confusion.

MRS. BENEDICT.

I am the wife of Benedict.
For gauds and gems mine heart was pricked
With fire and strained with strength of love.
Silks, yea, silk stockings thirteen pair,
Gloves and rich jewels to my wear,
The seller had small gain thereof.
Nathless we had but one poor house,
Of garnishment nought plenteous,
Of serving men eke scant enough.

Montague v. Benedict.
Seaton v. Benedict.
(2 Sm. L.C. 467, 475.)

Leading Cases

COUNTESS OF STRATHMORE.

Countess of Strathmore
v. Bowes.
(1 White & Tudor's
L.C. Eq.)

I am the Countess of Strathmore.

I married Bowes and rued it sore,

Yet spoiled his uttermost intent.

By cozenage and false championry

Him seemed he had my wealth in fee,

And it was all in settlement.

Great words he spake in this despite

Of fraud and his marital right,

In vanity his words were spent.

LADY ELIBANK.

Lady Elibank v. Monto-
lieu.
(1 Wh. & T L.C. Eq.)

I am the Lady Elibank.

Of all wives I have thank

That seek their goods i' the Chancery.

Done into English.

Wives' equity to settlement

Hath worship and establishment

And strength of days by this decree.

Seven years I strove there with my lord,
And plucked the flower of threefold word

1799—1806: before Lord
Loughborough, Lord
Eldon, and Sir *W.*
Grant.

In triple doom and mastery.

MRS. GALLAGHER.

The mystery of wives' separate trade

Johnson v. Gallagher
(3 De G. F. & J. 494).

By me Jane Gallagher was made

In latter days elucubrate.

I writ no writing, sealed no thing,

Thing = *Fait*, deed:
"indite and make a
thing."

I dealt after a man's dealing,

Until my debt was heavy and great.

By rede of the one Lord Justice,

Albeit it was newfangledness,

Judgment of *Turner*,
L. J., since approved in
the Privy Council, see
Law Rep., 4 P. C. 590-
594.

This will bind separate estate.

Leading Cases Done into English.

Married Women's Property Acts, 1870 and 1874. Their general utility.

To tell now in what wise was meant
This law should have additament
By wisdom of the Parliament,
Whereof our scriveners, as men seen,
Reck no more than an old bean,
As now it is not mine intent,
The tale were too long,
By these ensamples ye may find
What power han wives to loose and bind;
This ends my little song.

DEDICATION TO J. S.

WHEN waters are rent with commotion
Of storms, or with sunlight made whole,
The river still pours to the ocean
The stream of its effluent soul;
You too, from all lips of all living
Of worship dethroned and discrowned,
Shall know by these gifts of my giving
That faith is yet found :

Leading Cases

By the sight of my song-flight of cases
That bears on wings woven of rhyme
Names set for a sign in high places
By sentence of men of old time ;
From all counties they meet and they mingle,
Dead suitors whom Westminster saw ;
They are many, but your name is single,
Pure flower of pure law.

When bounty of grantors was gracious
To enfeof you in fee and in tail,
The bounds of your lands were made spacious
With lordship from Sale unto Dale ;
Trusts had you and services loyal,
Lips sovereign for ending of strife,
And the name of the world's names most royal
For light of your life.

Done into English.

Ah desire that was urgent to Romeward
And feet that were swifter than fate's,
And the noise of the speed of them homeward
For mutation and fall of estates !
Ah the days when your riding to Dover
Was prayed for and precious as gold,
The journeys, the deeds that are over,
The praise of them told !

But the days of your reign are departed,
And our fathers that fed on your looks
Have begotten a folk feeble-hearted
That seek not your name in their books ;
And against you is risen a new foeman
To storm with strange engines your home ;
We wax pale at the name of him Roman,
His coming from Rome.

Reading Cases

Even she, the immortal imperious
Supreme one from days long ago,
Sends the spectre of Aulus Agerius
To hound the dead ghost of John Doe :
By the name of Numerius Negidius
Your brethren are slain without sword ;
Is it so, that she too is perfidious,
The Rome you adored ?

Yet I pour you this drink of my verses,
Of learning made lovely with lays,
Song bitter and sweet that rehearses
The deeds of your eminent days :
Yea, in these evil days from their reading
Some profit a student shall draw,
Though some points are of obsolete pleading,
And some are not law.

Done into English.

Though the Courts that were manifold dwindle
To divers Divisions of one,
And no fire from your face may rekindle
The light of old learning undone,
We have suitors and briefs for our payment,
While, so long as a Court shall hold pleas,
We talk moonshine with wigs for our raiment,
Not sinking the fees.

NOTE.—This J. S. is a mythical person introduced for the purposes of illustration, and constantly met with in the older books of our law, especially Sheppard's Touchstone : a kind of cousin to John Doe and Richard Roe, but more active and versatile. In later works and in the Indian Codes his initials, which are supposed to stand for John Stiles, have degenerated into unmeaning solitary letters, such as A, B, and C. The old books are full of grants of lands to him for various estates, so that his wealth is evident. He also appears as a trustee and arbitrator, and (incongruously) as a servant. His devotion to Rome is shown by his desperate attempts to get there in three days : " If J. S. shall go to Rome in three days " is the standing example of an impossible condition. " If " or " until J. S. shall return from Rome " is also a frequent example of a condition or conditional limitation : hence the importance of

Leading Cases Done into English.

that event is obviously not exaggerated by the poet. It is not clear why he did not want to ride to Dover, seeing it was on the way to Rome. It is said, however, that one who is bound in a bond with condition that he shall ride with J. S. to Dover such a day must procure J. S. to go thither and ride with him at his peril. Aulus Agerius and Numerius Negidius are corresponding, and therefore rival, personages of the Civil Law, who may be found in the Digest and Institutes. It is understood that the revival of the study of Roman Law by the Inns of Court is to be commemorated in the decoration of the new Law Courts by colossal statues of Aulus Agerius and Numerius Negidius trampling on the corpses of John Doe and Richard Roe respectively.



